IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 424 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TANKIYABHAI NAJABHAI GAMIT

Versus

STATE OF GUJARAT

Appearance:
MR G RAMAKRISHNAN for Petitioner
MR MA BUKHARI, APP, for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 18/12/2000

ORAL JUDGEMENT

(Per : MISS JUSTICE R.M.DOSHIT)

1. This is an appeal preferred against judgment and order dated 27th March, 1999, passed by the learned Sessions Judge, Surat, in Sessions Case No.153 of 1989. The appellant before this Court is the accused. The appellant has been convicted for offence punishable under Section 302, I.P.C. and has been sentenced with life imprisonment.

2. The appellant-accused was alleged to have committed murder of his father-in-law one Chandiyabhai Manjibhai by strangulation. It was alleged that on 29th January, 1988, at around 11.30 in the night, the appellant had some quarrel with the deceased-Chandiyabhai Manjibhai and he strangulated the deceased-Chandiyabhai. The incidence was witnessed by the daughter-in-law of deceased-Chandiyabhai one Savuben Bedakiya (P.W.3).

3. Savuben Bedakiya (P.W.3) has given evidence that the accused-Tankiyabhai Nujabhai was married to one Jilaben, daughter of the deceased-Chandiyabhai. Accused-Tankiyabhai was brought to the house of the deceased-Chandiyabhai and was residing on the field in a house near the house of the deceased-Chandiyabhai. The deceased-Chandiyabhai used to scold the accused-Tankiyabhai for he did not work on the field. At the time of incidence, Jilaben, the wife of the accused and other villagers had gone to watch a drama (Tamasha) which was being played some 2 kms. from the village. At night, around 11.30, Bai Savuben who was sleeping in the room heard the voices of the accused and the deceased-Chandiyabhai who was sleeping in the open Osari of the house. Hearing the voice, she came out of the room. She saw the accused having caught hold of the deceased by the neck. She tried to save the deceased but she was pushed away and fell down. By the time she got up, the accused had strangulated the deceased-Chandiyabhai who died immediately and the accused ran away. Bai Savuben immediately informed the Police Patel and in the morning, the F.I.R. (Ex.17) was lodged by the Police Patel-Ratubhai Ghisaliyabhai (P.W.2). The accused was arrested on 30th July, 1989, i.e. a year and half after the date of incidence.

4. The evidence of Dr. Sharadbhai Shankerbhai (P.W.1) and the post-mortem note (Ex.10) prove that the deceased-Chandiyabhai died of asphyxia due to strangulation. The Panchnama of the scene of offence (Ex.7) and the map of the scene of offence (Ex.8) reveal that the house of the deceased has an open Osari around the constructed room and there is an electric pole some 20 feet away. The evidence of Bai Savuben as regards her informing the Police Patel at night and the Police Patel having gone to the Police Station to lodge the F.I.R. is supported by the evidence of Police Patel-Ratubhai Ghisaliyabhai (P.W.2).

5. We see no reasson why the evidence of the eye-witness - Savuben (P.W.3) or the Police Patel-Ratubhai (P.W.2) - should not be believed. The evidence of the eye-witness is also supported by the medical evidence. The evidence on record establishes the guilt of the accused beyond reasonable doubt. We are, therefore, of the view that the learned Trial Judge is right in recording the conviction of the accused and passing sentence upon him. The conviction of the accused and the sentence passed upon him are confirmed. Appeal is dismissed. Muddamal articles be disposed of as directed by the learned Trial Judge.

[MS. R.M. DOSHIT, J.]

[A.L. DAVE, J.]

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